IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22948 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VANKANER TALUKA PANCHAYAT - Petitioner(s)
Versus
MANHARLAL DHIRAJLAL MEHTA – Respondent(s)

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Appearance :
MR PREMAL R JOSHI for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,
MR ASIT M MEHTA for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 20/09/2006

ORAL JUDGMENT

This petition, though styled as a petition under Article 226 of the Constitution, is in effect a petition under Article 227 of the Constitution. The petition challenges the order dated 26.4.2005 made by the Court of Civil Judge (S.D.), Morbi below application Exh.36 in Civil Misc.Application No.66/2004 in the following circumstances:

1. The respondent herein is the applicant of Civil Miscellaneous Application No.66/2004 (Old No.28/2004) seeking succession certificate or letters of administration in relation to property of deceased Dhirajlal Rupchanda Mehta. The petitioner herein is a third party applicant who moved application Exh.36 seeking impleadment in the aforesaid proceedings on the ground that the said property for which a succession certificate or letters of administration have been prayed for, belongs to the applicant Taluka Panchayat.

2. The Trial Court in the impugned order has rejected the application of the petitioner-Taluka Panchayat on the ground that in the application moved by the petitioner-Panchayat, no

documentary evidence is annexed in support of the claim put forth and the application is not supported by duly sworn affidavit. It is further observed that in the circumstances the said application is rejected “at this stage”.

3. Mr.Premal Joshi, learned advocate appearing on behalf of the petitioner has submitted that the petitioner does not want any final order or finding but only prays for an opportunity to establish its case as to ownership of the property before the trial Court.

4. Mr.Ashit M.Mehta, learned advocate appearing on behalf of respondent has referred to various facts on merits of the controversy. The principal ground on which he has resisted petitioner's application is that the petitioner is the owner of property bearing No.4264 while the application for succession certificate relates to property bearing No.4265. He has also made various submissions qua so called misconduct by the President of Taluka Panchayat, one of the employees of Taluka Panchayat etc. to submit that no relief should be granted to the petitioner.

5. The affidavit-in-reply dated 18.09.2006 is in Gujarati and

hence the same has not been taken into consideration. Even otherwise, for the reasons that follow hereinafter, it is not necessary to enter into merits of the dispute between the parties.

6. As already noticed hereinbefore, the impugned order has proceeded on the footing that application is not supported by the documentary evidence as to ownership and the necessary affidavit. The trial Court has not recorded any finding of facts. In fact, if one reads the order of the Trial Court, it is apparent that the trial Court has left the issue open in case a proper application in proper form duly supported by relevant documentary evidence is filed.

7. In the circumstances, it is not necessary to quash and set aside the impugned order dated 26.04.2005. However, it will be open to the petitioner to move an appropriate application in accordance with law and in the event such an application is moved, the Trial Court shall consider the same in accordance with law. It will be open to the respondent to raise all objections on merits as well as in law to such application.

8. Considering the fact that it was due to negligence of the

petitioner-Taluka Panchayat that the respondent has been dragged here, it would be in the fitness of things if the petitioner is directed to pay the costs of the petition. The costs payable to the respondent is quantified at a sum of Rs.2,500/- which shall be paid by the petitioner-Panchayat to the respondent. Petition stands disposed of, accordingly. Rule discharged.

(D.A.MEHTA, J.)

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